

### **REMARKS/ARGUMENTS**

Claims 1-30 are pending in the present application. In the Office Action mailed April 7, 2004, the Examiner rejected claims 1-3 and 14-16 under 35 U.S.C. § 102(b). The Examiner also rejected claims 4-13 and 17-30 under 35 U.S.C. § 103(a).

In the above amendments, claims 1, 14 and 23 have been amended to recite “continuously monitoring system calls made by the application.” Support for this amendment may be found in Applicants’ specification on page 12, lines 7-17.

Claims 1, 14 and 23 have also been amended to recite “detecting a failure in a system call made by the application.” Support for this amendment may be found in Applicants’ specification on page 15, lines 19-20.

Claims 1, 14 and 23 have also been amended to specify that the repair mechanism is initiated “in response to the detecting of the failure in the system call.” Support for this amendment may be found in Applicants’ specification on page 2, lines 13-16.

Reconsideration is respectfully requested in view of the above amendments to the claims and the following remarks.

#### **A. Rejection of Claims 1-3 and 14-16 Under 35 U.S.C. § 102(b)**

The Examiner rejected claims 1-3 and 14-16 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,333,308 to Ananthanpillai (hereinafter, “Ananthanpillai”). Claims 2-3 and 15-16 have been cancelled. With respect to claims 1 and 14, this rejection is respectfully traversed.

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” M.P.E.P. § 2131 (Aug. 2001) (quoting Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)). “The identical invention must be shown in as complete detail as is contained in the . . . claim.” Id. (quoting Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989)). In addition, “the reference must be enabling and describe the applicant’s claimed invention sufficiently to have placed it in possession of a person of ordinary skill in the field of the invention.” In re Paulsen, 30 F.3d 1475, 1479, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994).

Applicants respectfully submit that Ananthanpillai does not disclose all of the limitations in claims 1 and 14. For example, claims 1 and 14 include the limitation “continuously monitoring system calls made by an application.” Ananthanpillai does not disclose this limitation.

Ananthanpillai relates generally to a “method and apparatus for operating a communication network monitor arrangement.” Ananthanpillai, col. 1, lines 2-4. Ananthanpillai discloses a communications network that includes a plurality of interconnected nodes 101, 103. Each node 101, 103 includes one or more central processing units (CPUs) 110, 111. Ananthanpillai states the following about each CPU 110, 111:

Each CPU may include a plurality of subsystems (which may themselves include programs) A-X which may, illustratively, each operate a different data communication service. For example, subsystem A may control an enhanced facsimile service, subsystem B may control a telex service, and subsystem X may control an EDI service.

Id., col. 2, lines 42-48. Each CPU 110, 111 also includes a network monitor program 120. The “network monitor program 120 ... is arranged to monitor each of the operating subsystems A-X using a separate monitor or status program (e.g. 207 of FIG. 2) for each subsystem.” Id., col. 3, lines 13-18.

The status programs 207, however, do not run continuously, as required by the claims at issue. Rather, the network monitor program 120 executes the status programs 207 recurrently. Ananthanpillai states that the “status programs of the network monitor system are recurrently executed to monitor the operating status of a communication network.” Ananthanpillai, col. 3, lines 50-53 (emphasis added). Ananthanpillai further explains that a “user-defined table (e.g., 203 of FIG. 4) lists the status program ... for each subsystem of the CPU.” Id., col. 1, lines 45-47. “The network monitor program 120 periodically accesses the user-defined table to execute one or more status programs in accordance with the user-specified time parameters listed for each status program.” Id., col. 3, lines 54-57 (emphasis added).

The following example from Ananthanpillai further illustrates that the network monitor program 120 does not continuously monitor the subsystems A-X on the CPU 110. In this example, the “network monitor 120 periodically runs status programs every 30 minutes, i.e., each time cycle is 30 minutes apart.” Ananthanpillai, col. 5, lines 47-49 (emphasis added). Ananthanpillai states:

During time cycle A, the network monitor accesses user-defined table 203 and determines from time interval column 452 which of the status programs, items 401-404, should be run.

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At the completion of cycle A, the network monitor 120 becomes inactive until the system clock indicates that 30 minutes have passed since the cycle A functions were performed. At that time, the network monitor 120 starts its next periodic cycle, cycle B.

Id., col. 5, line 47 – col. 6, line 13 (emphasis added). Thus, the network monitor 120 becomes inactive for a certain period of time between cycle A and cycle B. Accordingly, the network monitor 120 does not “continuously monitor[]” the subsystems, as required by the claims at issue.

In addition, even when the status programs of Ananthanpillai are executing, they do not “monitor[] system calls made by an application,” as required by the claims at issue. Rather, the status programs 207 “monitor the operational status of subsystems of a communications network.” Ananthanpillai, abstract (emphasis added). Ananthanpillai provides three examples of a “subsystem,” namely, an enhanced facsimile service, a telex service, and an EDI service. See id., col. 2, lines 46-48. The “input or output queues” of a subsystem “may become overloaded resulting in operational overloads or other abnormal conditions.” Id., col. 3, lines 3-5. Ananthanpillai states:

Each status program ... includes user-specified test parameters with the actual program name (e.g., as shown in 207 of FIG. 2 status program A -t -c -p . . . ) where A is the name of the status program and -t, -c, and -p are user-specified test parameters, where -t could be a threshold value for the age of the queue, -c could be a threshold value for the count or length of the queue, -p path of the queue. These test parameters are optional and are used for determining a normal and/or an acceptable status of an associated operating subsystem.

Id., col. 3, lines 18-30 (emphasis added). However, testing whether the age or length of a subsystem’s queue exceeds a threshold value is very different than “monitoring system calls made by an application,” as required by the claims at issue.

As can be seen from the foregoing discussion, Ananthanpillai does not disclose all of the limitations in claims 1 and 14. Accordingly, Applicants respectfully request that the rejection of claims 1 and 14 be withdrawn.

B. Rejection of Claims 4-13 and 17-30 Under 35 U.S.C. § 103(a)

The Examiner rejected claims 4-13 and 17-30 under 35 U.S.C. § 103(a) as being unpatentable over Ananthanpillai in view of U.S. Patent No. 5,349,674 to Calvert et al. (hereinafter, "Calvert"). This rejection is respectfully traversed.

The M.P.E.P. states that

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure.

The initial burden is on the examiner to provide some suggestion of the desirability of doing what the inventor has done. To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references.

M.P.E.P. § 2142.

Applicants respectfully submit that claims 4-13 and 17-30 are patentably distinct from the cited references. Even if Ananthanpillai and Calvert were combined as the Examiner proposes, the resulting combination does not teach or suggest all the limitations in claims 4-13 and 17-30.

Claims 4-13 and 17-30 each include the limitation "continuously monitoring system calls made by an application." As explained above, Ananthanpillai does not teach or suggest this limitation.

Calvert does not make up for the deficiencies of Ananthanpillai. Calvert relates generally to "a service network of computer systems to efficiently service problems." Calvert, col. 2, lines 42-44. A service network may include a service requestor (SR), a service provider/requestor (SP/R), and a service provider (SP). See id., col. 4, lines 13-24. Once a service network is established, an SR may "automatically detect problems with it's [sic] components (hardware, software, or microcode), build a service request describing the problem, select a SP/R responsible for fixing the problem, ... and send the service request to that SP/R." Calvert, col. 5,

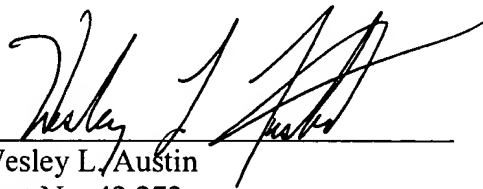
lines 12-19. Although Calvert states that problems may be automatically detected, Calvert does not teach or suggest "continuously monitoring system calls made by an application," as required by the claims at issue.

As can be seen from the previous discussion, the combination of Ananthanpillai and Calvert does not teach or suggest all of the limitations in claims 4-13 and 17-30. Accordingly, Applicants respectfully request that the rejections of claims 4-13 and 17-30 be withdrawn.

C. Conclusion

Applicants respectfully assert that claims 1, 4-14 and 17-30 are patentably distinct from the cited references, and request that a timely Notice of Allowance be issued in this case. If there are any remaining issues preventing allowance of the pending claims that may be clarified by telephone, the Examiner is requested to call the undersigned.

Respectfully submitted,



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